REMARKS

Applicants' representatives thank the Examiner for the courtesy of a telephone interview conducted on July 16, 2004. The present response addresses substantive points discussed during the interview. Accordingly, the present response is believed to constitute a complete written statement of the reasons presented in the interview as warranting favorable action, as required by 37 C.F.R. §1.133.

In the interview, the constructive election of species with respect to claims 16-46 and 58 was discussed. The Applicants' representatives indicated that no election or restriction requirement had been issued by the Patent Office in the instant application. The amendments to the claims made in the response filed October 3, 2003 added the recitation of an "articulating joint" to some of the claims, along with language directly from the specification that defined an articulating joint. See, e.g., page 6, lines 9-12. It was further noted that the Examiner had previously examined claims that included the limitation of an "articulating joint," for example, claim 5 as originally presented. During the interview, the Examiner indicated that she was uncertain as to the reasons behind the constructive election of species, and that she would reconsider the reasons behind the withdrawal of claims 16-46 and 58 to determine if the withdrawal had been properly made.

Applicants also note that, in the response filed October 3, 2003, claim 16 was incorrectly presented due to an inadvertent typographical error. The phrase "which is" within claim 16 should have been indicated as having been deleted. The correct formatting of claim 16 thus should have been:

> 16. (Currently amended) A kit for performing a surgical procedure, comprising:
> a surgical device comprising two or more modular units, at least two of which are connectable to each other at an articulating joint such that the units defining the articulating joint can move in three dimensions relative to each other, at least one of ~~which is~~ the two or more modular units being capable of being interchanged during surgery, the surgical device including at least a cannula section and an applicator section, wherein the device is suitable for delivery of at least one fluid during surgery and is capable of being provided in a sterilized condition, in combination with at least one of a propulsion means for fluid, a fluid to be dispensed, and a container for the fluid.

It is believed that this typographical error, as corrected here, does not substantially alter any of the arguments presented in the October 3, 2003 response.

Claims 1, 3 and 5-58 are currently pending. It appears that claims 16-46 and 58 have been withdrawn from consideration, although the body of the Office Action appears to be somewhat inconsistent with the Office Action Summary. Claims 1, 3, 5-13, 15 and 47-57 have been rejected. The status of claim 14 is unclear, since it is included in the list of claims rejected on the Office Action Summary, but no specific ground for rejection of claim 14 was provided in the body of the Office Action.

Rejections Under 35 U.S.C. §102(b) in view of Tilton

Claims 1, 3, 5-8, 15, and 47-57 have been rejected under 35 U.S.C. §102(b) as being anticipated by Tilton, U.S. Patent No. 5,766,157 ("Tilton").

Independent claim 1, as currently pending, includes an adapter section. It is not seen where in Tilton is there a disclosure or suggestion of an adapter section. Applicants also do not see where in Tilton is there a disclosure or suggestion of an articulating joint. Additionally, Tilton does not appear to disclose or suggest a cannula, as recited in independent claims 3, 47, and 49, nor does Tilton appear to disclose or suggest endoscopic surgery, or replacing applicator sections during surgery. Furthermore, it is not seen where in Tilton is a device including a unit capable of being interchanged during surgery disclosed or suggested. It appears that the Patent Office is in agreement with this position, as the Patent Office has noted that Tilton states that "all the units [are] irremovably attached to each other." Thus, for at least the above-mentioned reasons, it is respectfully requested that the rejection of claims 1, 3, 5-8, 15, and 47-57 be withdrawn.

Rejections Under 35 U.S.C. §102(e) in view of Cragg

Claims 1, 3, 9-11, and 15 were rejected under 35 U.S.C. §102(e) as being anticipated by Cragg et al., U.S. Patent No. 6,146,373 ("Cragg").

Applicants do not see where in Cragg is there a disclosure or suggestion of an applicator, as recited in independent claims 1 and 3. In Cragg, the component identified as 46 is a distal end cap, which contains a whole that allows a tube to pass. As fluid does not exit the distal end cap, it is not seen how the distal end cap can be considered to be an applicator. Furthermore, it is not seen where in Cragg is there a disclosure or suggestion of replacing a first applicator section with

a second applicator section, nor is there a disclosure or suggestion of endoscopic surgery. Accordingly, it is respectfully requested that the rejection of claims 1, 3, 9-11, and 15 be withdrawn.

Rejections Under 35 U.S.C. §102(e) in view of Miraki

Claims 1 and 15 were rejected under 35 U.S.C. §102(e) as being anticipated by Miraki, et al., U.S. Patent No. 6,248,092 ("Miraki").

Miraki does not appear to disclose an applicator, nor does Miraki appear to disclose or suggest the delivery of a fluid from a catheter. Thus, it is believed that claims 1 and 15 are not anticipated by Miraki. Withdrawal of the rejection of these claims is therefore respectfully requested.

Rejections Under 35 U.S.C. §102(b) in view of Lampropoulos

Claims 1, 12, 13, 47, and 48 have been rejected under 35 U.S.C. §102(b) as being anticipated by Lampropoulos, et al., U.S. Patent No. 5,817,072 ("Lampropoulos").

Regarding claim 1, it is not seen where in Lampropoulos is there a disclosure or a suggestion of an adapter section, and the Patent Office has not pointed to a disclosure or suggestion. Regarding claims 47 and 48, the Patent Office has not indicated where in Lampropoulos is there a disclosure or suggestion for altering the catheter apparatus in between deliverance of a therapeutic agent. Thus, for at least the above-mentioned reasons, it is respectfully requested that the rejection of claims 1, 12, 13, 47, and 48 be withdrawn.

CONCLUSION

In view of the foregoing remarks, this application should now be in condition for allowance. A notice to this effect is respectfully requested. If the Examiner believes, after this response, that the application is not in condition for allowance, the Examiner is requested to call the undersigned at the telephone number listed below.

If this response is not considered timely filed and if a request for an extension of time is otherwise absent, Applicants hereby request any necessary extension of time. If there is a fee occasioned by this response, including an extension fee, that is not covered by an enclosed check, please charge any deficiency to Deposit Account No. 23/2825.

Respectfully submitted,

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